

1 John C. Hueston, State Bar No. 164921  
jhueston@hueston.com  
2 Moez M. Kaba, State Bar No. 257456  
mkaba@hueston.com  
3 Steven N. Feldman, State Bar No. 281405  
sfeldman@hueston.com  
4 HUESTON HENNIGAN LLP  
523 West 6th Street, Suite 400  
5 Los Angeles, CA 90014  
Telephone: (213) 788-4340  
6 Facsimile: (888) 775-0898

7 Attorneys for Plaintiff  
MONSTER ENERGY COMPANY,  
8 a Delaware Corporation

9

10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**

12

13 MONSTER ENERGY COMPANY, a  
Delaware corporation,

14 Plaintiff,

15 vs.

16 VITAL PHARMACEUTICALS, INC.,  
d/b/a VPX Sports, a Florida corporation;  
17 and JOHN H. OWOC a.k.a. JACK  
18 OWOC, an individual,

19 Defendants.

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21 Case No. 5:18-cv-1882

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23 **DECLARATION OF STEVEN N.**  
**FELDMAN ISO PLAINTIFF**  
**MONSTER ENERGY COMPANY'S**  
**OPPOSITION TO DEFENDANTS' *EX***  
***PARTE* APPLICATION TO STAY OR**  
**EXTEND DEFENDANTS'**  
**RESPONSIVE PLEADING**  
**DEADLINE**

**DECLARATION OF STEVEN N. FELDMAN**

I, Steven N. Feldman, declare as follows:

1. I am an attorney at law duly licensed to practice before all of the courts in the State of California. I am a partner at Hueston Hennigan LLP, counsel of record for Monster Energy Company in this action. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would testify competently to such facts under oath.

8 2. Hueston Hennigan appeared as counsel in this case on January 31, 2019.  
9 Dkt. Nos. 35-37. In the interim period, Monster and Hueston Hennigan have been  
10 drafting an amended complaint. This amended complaint reflects recently  
11 discovered facts and includes new legal theories developed by current counsel.  
12 These substantive additions include: (a) new causes of action brought under  
13 California law; (b) allegations of tortious conduct committed by Defendants in  
14 California; and (c) wrongful conduct and unfair competition by Defendants  
15 independent of their false advertising, including tortious interference with Monster's  
16 contractual rights, other intentional torts, and violations of California's Penal Code.

17       3.     Monster intends to get its amended complaint on file as soon as possible  
18 in order to streamline these proceedings.

19       4.     On March 20, 2019, Timothy Branson, counsel of record for Defendants  
20 in this action, called me to discuss this case. Mr. Branson told me that Defendants  
21 intended to file a motion to dismiss Defendant Owoc for lack of personal  
22 jurisdiction, a motion to transfer venue, and a motion to stay. Mr. Branson also  
23 informed me that, unless Plaintiff stipulated to voluntarily dismiss Defendant  
24 Owoco, Defendants planned to file a motion for sanctions against me under Federal  
25 Rule of Civil Procedure 11. A true and correct copy Mr. Branson's e-mail to me is  
26 attached hereto as **Exhibit 1**.

27 5. I knew that the amended complaint would moot Owoc's motion to  
28 dismiss and substantially affect Defendants' motions to stay and transfer, requiring a

1 second round of briefing on all issues. I also knew that the amended complaint  
 2 would address Defendant Owoc's jurisdiction argument and significantly bolster  
 3 Monster's claims.

4       6.     Monster could have waited for Defendants to file a motion to dismiss  
 5 pursuant to Federal Rule of Civil Procedure 12 on the April 1, 2019 deadline, and  
 6 then filed Monster's amended complaint as of right as early as the next day. But  
 7 rather than stay quiet and force Defendants to go through that costly exercise, I called  
 8 Mr. Branson the very next day and suggested that the parties stipulate to the filing of  
 9 an amended complaint—thus relieving Defendants of their obligation to respond on  
 10 April 1.

11       7.     Mr. Branson initially indicated during our call that Defendants would  
 12 stipulate. But because Federal Rule of Civil Procedure 15(a)(2) requires an  
 13 agreement in writing, I followed up with an e-mail to confirm our agreement that  
 14 same day, March 21, 2019. *See Exhibit 1.*

15       8.     I did not receive a response, so I sent a second e-mail to Timothy  
 16 Branson seeking to confirm our agreement on March 25, 2019. *See Exhibit 1.*

17       9.     On March 26, I then received a call from Sean P. Flynn, who is also  
 18 counsel for Defendants. Mr. Flynn reneged on the agreement I had made with Mr.  
 19 Branson, stating that Defendants would not stipulate unless Monster provided them  
 20 with an advanced copy of the amended complaint. Mr. Flynn also indicated that  
 21 Defendants would not stipulate unless Monster's amendments were minor.  
 22 Monster's amendments are not minor.

23       10.    I was concerned that Defendants would review the amended complaint  
 24 and refuse to stipulate to its filing—in effect guaranteeing for themselves significant  
 25 extra time to respond and prepare their defense to Monster's litigation strategy. I  
 26 therefore could not agree to provide Defendants an advanced copy of the complaint  
 27 without some commitment that we could eventually file it. Mr. Flynn provided no  
 28 other proposal to resolve this dispute.

1  
2 I declare under penalty of perjury under the laws of the State of California that the  
3 foregoing is true and correct.

4 11. To be clear, Monster has no intent to waste this Court's or the parties'  
5 resources. Monster remains willing to work with Defendants and establish an  
6 appropriate schedule so that this case can finally begin in earnest.

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8 Executed on this 28th day of March, 2019, at Los Angeles, California.

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10 /s/ Steven Feldman  
11 Steven N. Feldman

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